

WILLIAM K. MAYO.

JUNE 20, 1898.—Laid on the table and ordered to be printed.

Mr. DAYTON, from the Committee on Naval Affairs, submitted the following

ADVERSE REPORT.

[To accompany H. R. 6686.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 6686) giving William K. Mayo the rank and pay of a rear-admiral on the retired list of the Navy, having fully considered the same, recommend that the bill do not pass.

Inasmuch as a similar bill has at least heretofore once been favorably reported by the Committee on Naval Affairs to the Senate, it is deemed necessary to say that this adverse report is not meant as any reflection upon the character of the beneficiary nor upon the action of the Senate committee referred to. It is simply based upon the conviction that it would be an unwise and troublesome precedent to establish, and one which, under the circumstances, there is no necessity to establish.

The facts are disclosed in a memorial filed by the applicant, and in a letter dated January 22, 1898, from the Navy Department, both of which are hereto appended and made a part of this report.

Without entering upon a discussion of these facts, your committee are clearly of the opinion that the practice of retired naval officers seeking promotion upon the retired list should be discouraged and only in extraordinary cases should such action be taken by the Congress.

While some cases may present themselves where injustice has been done to brave officers retired early in life by reason of injury or other infirmity incurred in the line of duty, and who by conspicuous acts of bravery have deserved such exceptional action, yet, generally, it is thought the provisions of existing law are ample and complete to suitably recognize and compensate those who in accord with regulations have been retired.

Take for example this case: Under the law Mayo has been retired as a commodore. He is receiving in such retirement three-fourths of sea pay, or \$3,750 a year. By passing this bill and promoting him on the retired list to the office of rear-admiral he would receive three-fourths of the sea pay of that grade, or \$4,500 annually, an increase of \$750 a year for the full period of his natural life. In addition to this, he would

receive in a lump sum for the period covering his retirement up to May 18, 1898, under the provisions of this bill, \$9,000.

Your committee, recognizing the fact that an officer on the retired list is substantially the master of his own time, subject only to a call to perform duty for his country in time of war, free to engage in business on his private account, are very clearly of the opinion that the compensation of \$3,750 is adequate for the past services of Commodore Mayo and fully sufficient to enable him to live in moderate comfort and ease without giving him this \$9,000 and increasing his future annual allowance from the National Treasury to \$4,500.

To the House of Representatives of the United States of America :

The memorial of William K. Mayo, a commodore on the retired list of the Navy, respectfully represents:

The memorialist was born in the State of Virginia on the 29th day of May, 1829, and was appointed from that State a midshipman in the Navy on the 18th day of October, 1841.

On the 18th day of May, 1886, he was retired as a commodore under the terms of section 1443 of the Revised Statutes, which provides that "when any officer of the Navy has been for forty years in the service of the United States he may be retired from active service upon his own application."

It is the purpose of this memorial to state briefly the circumstances under which his application for retirement was made, and also certain other considerations from which he thinks it will be apparent that his application, though apparently made voluntarily, was, in fact, enforced, and that at that time he was, and is now, justly entitled to be promoted to the rank of rear-admiral.

On the 26th of February, 1886, the memorialist, then being a commodore, received orders from the Secretary of the Navy to report at Washington to the medical examining board, and also before the naval retiring board, for examination preliminary to promotion to the rank of rear-admiral, in accordance with the requirements of sections 1496 and 1497 of the Revised Statutes.

He appeared before the medical board and was critically examined and successfully passed the examination on the 4th of March, 1886.

On the same day he reported to the examining board, consisting of Vice-Admiral Rowan, president, and of Rear-Admirals Worden and Luce, for examination, as required by law, as to "his mental, moral, and professional fitness to perform all his duties at sea."

This board made no examination whatever by questions addressed to him to test his qualifications for promotion, nor did it summon before it and examine orally any witnesses as to his mental, moral, and professional fitness to perform the duties of a rear-admiral at sea.

It obtained, considered, and based its findings exclusively upon the answers of Rear-Admiral Nichols to certain questions propounded to him by the board and made in the form of an affidavit, and upon correspondence, reports, papers, etc., on file in the Navy Department, relating wholly to matters and cases of discipline, etiquette, and administration that occurred in the conduct of the business of the Norfolk Navy-Yard during his command there, which covered a period of about 2 years and 9 months.

With reference to these occurrences at the Norfolk Navy-Yard the board said:

"Any one of the foregoing cases might be considered as of minor importance and as exhibiting on the part of Commodore Mayo a mere error of judgment, which all men, at one time or another, are liable to fall into. But, aggregated, they indicate unmistakably a habit and condition of mind the manifestation of which in a commanding officer is demoralizing in its tendency and subversive of discipline."

The finding of the board was, that "if while in command of a shore station, and under the restraining influence of the Navy Department, Commodore Mayo has betrayed such mental peculiarities as are shown by the evidence, the board is forced to the conclusion that he ought not to be intrusted with the duties and responsibilities inseparable from a command in foreign waters."

It therefore refused to give the certificate required by section 1504 of the Revised Statutes.

Before he was officially advised of this finding, the memorialist made an application to the board to be informed what were the obstacles in the way of its favorable action, and on the 18th of March, 1886, asked for a further hearing.

By the direction of the Secretary of the Navy, the case was reopened on behalf of the memorialist, and further evidence was submitted, consisting of (1) the answers of Rear-Admirals English, Upshur, and Cooper to the interrogatories propounded to them; (2) the answers of thirteen officers, of a rank inferior to that held by the memorialist, to interrogatories propounded to them; (3) the oral testimony of the honorable William E. Chandler, formerly Secretary of the Navy; (4) the sworn statement of the memorialist.

Rear-Admiral English stated, under oath, that he had known Commodore Mayo for 20 years; that during a part of the time that Commodore Mayo was commandant at the Norfolk Navy-Yard he was Chief of the Bureau of Equipment and Recruiting; that during that time Commodore Mayo "performed his duties in a thoroughly efficient manner," and that his reputation as an officer and a gentleman was excellent; that by reason of his general knowledge and well-known professional abilities he was mentally and professionally qualified for promotion; and that he, Rear-Admiral English, considered him, Commodore Mayo, "mentally, morally, and professionally a fit officer to perform all his duties at sea in a higher grade."

Rear-Admiral Upshur stated, under oath, that he had known Commodore Mayo from childhood; that he had sailed with him; that he performed his duties in a zealous and efficient manner, and was conspicuous for his impartial dealings with his subordinates; that his intelligence and professional attainments place him far above the average naval officer; that there can be no doubt as to his mental qualification for promotion; that he is well up in his profession; that his technical knowledge and extensive information render him well qualified for promotion; and that he, Rear-Admiral Upshur, considered him, Commodore Mayo, to be mentally, morally, and professionally fit to perform all his duties at sea in a higher grade.

Rear-Admiral Cooper stated that he had never sailed or served with Commodore Mayo and did not know anything about him.

Thirteen officers, inferior in rank to Commodore Mayo, who were under his command at the Norfolk Navy-Yard, or who were in command of vessels that visited the yard, and were familiar with the manner in which the business of the yard was transacted, and with the conduct of Commodore Mayo as commandant, stated that his duties were performed with care, zeal, and efficiency, and that his deportment was always that becoming to an officer and a gentleman.

Mr. Chandler testified that he was Secretary of the Navy while Commodore Mayo was in command of the Norfolk Navy-Yard; that he had selected Commodore Mayo for that position; that he had full opportunity to know and did know the way in which Commodore Mayo conducted the business of the station; and that his duties as commandant were performed with efficiency and fidelity.

The favorable testimony of Rear-Admirals English and Upshur, and of the thirteen officers of inferior rank, and of the former Secretary of the Navy, was not considered by the board as authorizing any change in its opinion and was declared to be insufficient to warrant a modification of its first finding.

This final finding of the board was made known to the memorialist after it was reported to the Secretary of the Navy, and before it was reported to the President for his approval or disapproval, and the memorialist was thereby put in great doubt and perplexity as to the course which it was best for him to pursue.

It was plain that if the finding of the board should be approved by the President the result would be that the memorialist would be placed on the retired list as an officer "not recommended for promotion," and this would have fixed a lasting stigma upon his professional character, and by reason of the provisions of sections 1447 and 1558 of the Revised Statutes would have deprived him of 25 per centum of the pay he would be entitled to receive if retired upon his own application.

On the other hand, if the finding of the board should be disapproved, there was no reason to hope that the irreconcilable hostility of the board as then organized could be overcome or modified, and as there were not, at that time, in the country three other officers of rank superior to his own, it would have been impossible to have had his case referred to another board.

For these reasons, and to avoid the serious dangers that threatened him if he had taken any other action, the memorialist felt constrained to ask to be retired.

It has thus happened that after nearly 45 years of honorable and efficient service, after having passed with credit through all the grades of the service up to that of rear-admiral, and without ever having been court-martialed or made the subject of public censure or involved in any serious professional difficulty, he has been denied the promotion for which the law makes provision.

On a full examination of the record of the memorialist since he entered the Navy, and of the proceedings of the examining board, it is believed that it will be obvious that the action of the board in respect of the promotion of the memorialist was wholly unwarranted by the evidence before it, and was based upon a misconception of the requirements of the law.

It will also be obvious that through prejudice or personal dislike, or a misappre-

hension of their statutory duty, the board has done him a great injustice in belittling and, in part, ignoring the facts and testimony that were in favor of the memorialist, and in exaggerating into serious faults occurrences that were of the most trivial character, and thus creating a barrier to his promotion wholly unwarranted by law.

The petition of the memorialist therefore is that his record and professional history, as shown by the proceedings of the examining board, may be considered by Congress, and that his rank and pay on the retired list of the Navy shall be made that of a rear-admiral, if such action shall be considered just and proper.

Respectfully submitted,

W. K. MAYO,
Commodore (Retired), United States Navy.

NAVY DEPARTMENT,
Washington, January 22, 1898.

SIR: Referring to the bill (H. R. 6686) "giving William K. Mayo the rank and pay of a rear-admiral on the retired list of the Navy," and to your request of the 20th instant for the views of the Department in regard thereto, I have the honor to state that it appears from an examination of the records that in March, 1886, Commodore Mayo was in due course examined as to his qualifications for promotion to the grade of rear-admiral, by a board consisting of Vice-Admiral Rowan and Rear-Admirals Worden and Luce. This board, after a careful and painstaking examination of the record of the candidate, reported as follows:

"The candidate having failed to establish his mental fitness in all respects, the board can not give the certificate required by section 1504 of the Revised Statutes that he 'has the mental, moral, and professional qualifications to perform efficiently all the duties, both at sea and on shore,' of the next higher grade, and, therefore, we do not recommend him for promotion."

Subsequently, in April of the same year, Commodore Mayo's case was, at the request of that officer and by authority of the Department, reopened, and he was given a rehearing, during which he was assisted by counsel—a civilian attorney at law and a brother officer. Upon conclusion of this rehearing the board reported as follows:

"The board finds, and reports, that the additional testimony and evidence submitted by the candidate are insufficient to warrant a modification of the original finding."

Before any action was taken upon the findings of the board in this case, Commodore Mayo on May 7, 1886, made application to be placed on the retired list under the provisions of section 1443 of the Revised Statutes, which provides that when any officer of the Navy has been forty years in the service of the United States he may be retired from active service by the President upon his own application. This application was approved by the President on the 18th idem, and Commodore Mayo was accordingly placed on the retired list.

The act approved August 5, 1882, entitled "An act making appropriations for the naval service for the year ending June 30, 1883, and for other purposes," contains the following clause:

"Hereafter there shall be no promotion or increase of pay on the retired list of the Navy, but the rank and pay of officers on the retired list shall be the same that they are when such officers shall be retired."

In view of the provision of law above cited, the Department is of opinion that special legislation providing for the promotion of officers after retirement should be enacted only in exceptionally meritorious cases; and, inasmuch as Commodore Mayo did not receive the promotion to which he would otherwise have been entitled by reason of his failure to pass the required examination, his case is not one which may properly be classed in this category. The Department does not, therefore, recommend the bill in question to the favorable consideration of the committee.

Very respectfully,

JOHN D. LONG, *Secretary.*

The CHAIRMAN OF THE SUBCOMMITTEE ON PRIVATE BILLS,
Committee on Naval Affairs, House of Representatives.